

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES F. LOVE,

Petitioner,

-vs-

HAMILTON COUNTY COURT
OF COMMON PLEAS,

Respondent.

:

Case No. 1:09-cv-592

:

District Judge S. Arthur Spiegel
Magistrate Judge Michael R. Merz

ORDER

This habeas corpus action is before the Court on Objections by Petitioner (Doc. No. 25) and by Respondent (Doc. No. 26) to the Magistrate Judge's Report and Recommendations (Doc. No. 20); Petitioner has filed a Response to Respondent's Objections (Doc. No. 28). The General Order of Reference for the Dayton location of court permits a magistrate judge to reconsider decisions or reports and recommendations when objections are filed and Judge Spiegel has expressly asked that this be done in this case.

From reading the Objections, it is clear the Magistrate Judge did not sufficiently understand the arguments Petitioner was making in the Petition. This may also be true of the Respondent, whose counsel read the Petition as raising five grounds for relief (Return of Writ, Doc. No. 10, PageID 1276), a reading to which Petitioner never directly responded. To ensure that the Court understands and can fairly adjudicate the claims being made, it is hereby ORDERED:

1. The original Report and Recommendations (Doc. No. 20) are withdrawn;

2. Petitioner shall, not later than July 15, 2011, file an amended petition which sets forth clearly and concisely every claimed constitutional violation being alleged in this case, followed by factual and legal argument on that claim. For example, if Petitioner is indeed making only one claim of constitutional violation (as he states in his Objections), the amended petition might aver “Retrial of Petitioner on the 1996 indictment and the 2007 Amended Bill of Particulars would violate Petitioner’s rights under the Double Jeopardy Clause because” Petitioner is of course free to state as many arguments and cite as much authority as he has on each claim he makes, but he may not incorporate other documents into the amended petition.
3. Respondent shall file an amended answer and return of writ not later than August 1, 2011.
4. Petitioner may file a traverse to the amended answer not later than August 15, 2011.
5. Counsel shall confer with one another and contact Judicial Assistant Kelly Kopf (937.512.1550) for a date for oral argument on the amended petition after briefing is complete.

June 25, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge